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HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Belarus

1. The Committee considered the fourth periodic report of Belarus (CCPR/C/84/Add.4 and Add.7) at its 1632nd and 1633rd meetings, on 30 October 1997, and subsequently adopted 1/ the following comments:

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Belarus, although it notes that the report did not comply with its guidelines concerning the form and content of periodic reports. While regretting that the report lacks sufficient information on the enjoyment of human rights by the people and the implementation of the provisions of the Covenant in law and in practice, the Committee expresses its appreciation to the delegation for the answers it provided to its questions, which to some extent enabled it to obtain a clearer picture of the human rights situation in the country, as well as for the additional written information submitted by the State party.

3. The information submitted by a number of local non-governmental organizations assisted the Committee in its understanding of the human rights situation in the State party.

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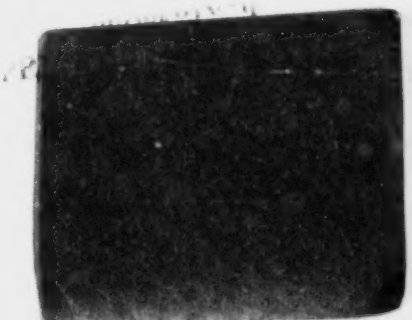
1/ At the 1643rd meeting, held on 6 November 1997.





## B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes that 20 per cent of the national budget has to be devoted to alleviating the consequences of the Chernobyl disaster, and its particularly harsh effects on children.

## C. Positive aspects

5. The Committee notes the various steps taken to improve the situation of women in Belarus, particularly in the labour market, and it welcomes the creation of a Women's Crisis Centre to shelter women victims of rape or domestic violence. The Committee also welcomes the statistics provided by the delegation on the participation of women in the labour force in the private and public sectors, although it regrets that they were not disaggregated so as to reveal the number of women occupying senior posts.

6. The Committee welcomes the decision of the constitutional Court, recognizing the supremacy of the Covenant over domestic law by declaring the retroactive application of a criminal law invalid, in accordance with article 15 of the Covenant.

## D. Subjects of concern and the Committee's recommendations

7. The Committee notes with concern that remnants of the former totalitarian rule persist and that the human rights situation in Belarus has deteriorated significantly since the Committee's consideration of the State party's third periodic report in 1992. The Committee notes in particular the persistence of political attitudes that are intolerant of dissent or criticism and adverse to the promotion and full protection of human rights, the lack of legislative limits on the powers of the executive, and the growing concentration of powers, including legislative powers, in the hands of the executive, without judicial control.

8. The Committee notes with concern that the number of crimes for which the death penalty is applicable under the Criminal Code is still very high, and that decrees defining new crimes punishable by death, such as Presidential Decree No. 21 of 21 October 1997, have recently been enacted. The Committee expresses its serious concern at the very high number of death sentences actually carried out. Furthermore, the Committee is also concerned at the secrecy surrounding the procedures relating to the death penalty at all stages. Therefore:

> The Committee recommends that the application of the death penalty be restricted to the most serious crimes, as provided for in article 6, paragraph 2, of the Covenant, and that its abolition be considered by the State party at an early date. To that end the Committee recommends that a thorough review of relevant legislation and decrees be undertaken to ensure their compliance with the Covenant and, in doing so, due account be taken of the Committee's General Comment No. 6 (16) and of the Committee's jurisprudence establishing that the imposition of the death penalty following a trial which does not comply with the requirements of article 14 of the Covenant violates article 6.

9. The Committee expresses its concern about numerous allegations of ill-treatment of persons by police and other law enforcement officials during peaceful demonstrations and on arrest and detention, and about the high number of cases in which police and other security officials resort to the use of weapons. Noting that investigations of such abuses are not conducted by an independent mechanism and that the number of prosecutions and convictions in these cases is very low, the Committee expresses concern that these phenomena may lead to impunity for members of the police and other security officials. Therefore:

> The Committee recommends that, in order to combat impunity, steps be taken to ensure that all allegations of ill-treatment and unlawful use of weapons by security and police officials be promptly and impartially investigated by an independent body, that the perpetrators be prosecuted and punished, and that the victims be compensated. Moreover, in accordance with paragraph 10 of the Committee's General Comment No. 20 (44) on article 7 of the Covenant, "enforcement personnel, (...) police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training" concerning the ban on torture and other cruel, inhuman or degrading treatment prohibited by article 7 and the observance of other human rights norms.

10. The Committee notes with concern that pre-trial detention may last up to 18 months, and that the competence to decide upon the continuance of pre-trial detention lies with the Procurator and not with a judge, which is incompatible with article 9, paragraph 3, of the Covenant. The Committee also notes with regret that it has not been clarified in the report or in the course of the discussion whether proceedings before a court challenging the lawfulness of the detention, in accordance with article 9, paragraph 4, of the Covenant, are available to persons thus detained. In this regard:

> The Committee recommends that the laws and regulations relating to pre-trial detention be reviewed as a matter of priority so as to comply with the requirements of article 9 of the Covenant.

11. The Committee further notes with concern that the supervision of places of detention, by virtue of the Law of the Procurator's Office, is under the competence of the Procurator's Office, and that there exists no independent mechanism competent to receive and investigate complaints by detainees. Moreover, the Committee expresses its concern at the overall conditions of detention in prisons, in particular with respect to overcrowding, and wishes to emphasize that the existence of "punishment cells" and the fact that food rations are reduced for detainees placed in such cells, the pressovchiki in prison cells, and the conditions of detention of prisoners sentenced to death, are matters of particular concern. Therefore:

> The Committee recommends that steps be taken to improve prison conditions, including conditions for prisoners on death row, and that in so doing account be taken of the Committee's General Comment No. 21 (44) on article 10 of the Covenant and the United Nations Minimum Standard Rules for the Treatment of Prisoners. The Committee recommends in

particular that the practice of "punishment cells", in which particularly harsh conditions are imposed on prisoners, and the use of pressovchiki, are contrary to the Covenant, and recommends that their use be abolished.

12. With respect to the freedom of movement and the right to choose one's residence, the Committee reiterates the concerns it expressed during the consideration of the State party's third periodic report in regard to the retention of the Propiska (residents' permit) system used under the previous regime. The Committee also expresses its concern about the number of unreasonable restrictions imposed by article 5 of the Procedure for Entry to and Exit from the Republic of Belarus by Citizens of the Republic of Belarus Act on the freedom of citizens to leave the country, some of them being vaguely defined and open to wide interpretation by the authorities and therefore susceptible of abuse, such as possession of State secrets, refusal to discharge obligations, or ongoing proceedings in case of a civil suit. Therefore:

The Committee recommends that measures be taken to ensure that article 12 of the Covenant is fully complied with, and it urges the State party to repeal the Propiska system.

13. The Committee notes with concern that the procedures relating to tenure, disciplining and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary. The Committee is particularly concerned that the judges of the Constitutional Court and Supreme Court can be dismissed by the President of the Republic without any safeguards. The Committee also notes with concern the allegation that two judges were dismissed by the President of the Republic on the ground that in the discharge of their judicial functions they failed to impose and collect a fine imposed by the executive. Furthermore, the Committee is concerned at the failure of the President of the Republic to respect the decisions of the Constitutional Court and to observe the rule of law.

14. The Committee also notes with concern the adoption of the Presidential Decree on the Activities of Lawyers and Notaries of 3 May 1997, which gives competence to the Ministry of Justice for licensing lawyers and obliges them, in order to be able to practise, to be members of a centralized Collegium controlled by the Ministry, thus undermining the independence of lawyers. In this regard:

The Committee stresses that the independence of the judiciary and the legal profession is essential for a sound administration of justice and for the maintenance of democracy and the rule of law. The Committee urges the State party to take all appropriate measures, including review of the Constitution and the laws, in order to ensure that judges and lawyers are independent of any political or other external pressure. The attention of the State party is drawn in this connection to the 1985 Basic Principles on the Independence of the Judiciary and the 1990 Basic Principles on the Role of Lawyers, adopted by the United Nations General Assembly.

15. The Committee expresses concern about reports of arbitrary infringements of the right to privacy, in particular of abuses by the authorities in regard to wire-tapping and house searches. Moreover, the Committee notes with concern that, under article 20 of the Law on Investigative Activities, decisions on the legality of such activities are in the competence of the General Procurator, without a court review. Therefore:

> The Committee recommends that investigative activities affecting the right to privacy be conducted in accordance with article 17 of the Covenant, and that the competence to decide upon requests for and the legality of such activities be transferred to the courts.

16. The Committee notes the statement of the delegation of Belarus that legislation on conscientious objection to military service is envisaged. In this regard:

> The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22 (48).

17. The Committee expresses its deep concern about the numerous and serious infringements of the right to freedom of expression. In particular, the fact that most publishing, distribution and broadcasting facilities are State owned, and that editors-in-chief of State-supported newspapers are State employees, effectively exposes the media to strong political pressure and undermines its independence. The many restrictions imposed on the media, in particular the vaguely defined offences, are incompatible with article 19, paragraph 3, of the Covenant. The Committee also notes that as a result of the provisions of Presidential Decree No. 218 of 18 March 1997, the freedom to import and export information, either through the print or audio-visual media, is severely restricted. Furthermore, the Committee expresses concern about reports of harassment and intimidation of local and foreign journalists by the authorities and the denial of access to public broadcasting facilities by political opponents to the Government. Therefore:

> The Committee urges the State party to take all necessary measures, legislative as well as administrative, in order to remove these restrictions on freedom of expression, which are incompatible with its obligations under article 19 of the Covenant, as a matter of priority.

18. The Committee also expresses its concern about severe restrictions imposed on the right to freedom of assembly which are not in compliance with the Covenant. The Committee notes in particular that applications for permits to hold demonstrations are required to be submitted 15 days prior to the demonstration and are often denied by the authorities, and that Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of posters, banners or flags that "insult the honour and dignity of officials of State organs" or which "are aimed at damaging the State and public order and the rights and legal interests of citizens". These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in article 21 of the Covenant. Therefore:

The Committee recommends that the right of peaceful assembly be fully protected and guaranteed in Belarus in law and in practice and that limitations thereon be strictly in compliance with article 21 of the Covenant, and that Decree No. 5 of 5 March 1997 be repealed or modified so as to be in compliance with that article.

19. With respect to article 22 of the Covenant, the Committee is also concerned about the difficulties arising from the registration procedures to which non-governmental organizations and trade unions are subjected. The Committee also expresses concern about reports of cases of intimidation and harassment of human rights activists by the authorities, including their arrest and the closure of the offices of certain non-governmental organizations. In this regard:

The Committee, reiterating that the free functioning of non-governmental organizations is essential for protection of human rights and dissemination of information in regard to human rights among the people, recommends that laws, regulations and administrative practices relating to their registration and activities be reviewed without delay in order that their establishment and free operation may be facilitated in accordance with article 22 of the Covenant.

20. The Committee, while noting that under the Citizens' Communications Act of 6 June 1996 communications may be addressed to State organs, expresses concern that there is no independent mechanism competent to investigate and monitor allegations of human rights violations in Belarus. It also expresses concern at the lack of publicity in regard to the availability of the procedure under the Optional Protocol to the Covenant to victims of violations of their rights under the Covenant, though the right to have recourse to international complaints procedures has been given constitutional protection in Belarus. Therefore:

The Committee recommends that steps be taken to expedite the planned establishment of an Ombudsman's Office and to ensure that he/she has effective powers to investigate complaints of violations of human rights. Information on the individual communications procedure under the Optional Protocol should be disseminated among the public at large, and in particular among prisoners (including prisoners on death row) and other detainees and members of the legal profession, and education on the full extent of their human rights should be made available to the population at large. A mechanism should be established to ensure the implementation of the Views expressed by the Committee under the Optional Protocol to the Covenant.

21. The Committee draws the attention of the Government of Belarus to the provisions of the guidelines regarding the form and contents of periodic reports from States parties, and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Belarus.

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